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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

8 ALICE D.,

9 Plaintiff,

10 v.

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

Case No. C20-5654-SKV

ORDER AFFIRMING  
COMMISSIONER'S DECISION

13  
14 Plaintiff seeks review of the denial of her application for a Period of Disability and  
15 Disability Insurance Benefits (DIB). Having considered the Administrative Law Judge's  
16 decision, the administrative record (AR), and all memoranda of record, the Court **AFFIRMS** the  
17 Commissioner's final decision and **DISMISSES** the case with prejudice.

18 **BACKGROUND**

19 Plaintiff was born in 1952, has at least a college education, and has worked as an assistant  
20 principal and a principal. AR 15, 24. Plaintiff was last gainfully employed between October 1,  
21 2017 and September 30, 2018. AR 17.

22 On January 27, 2016, Plaintiff applied for benefits, alleging disability as of October 31,  
23 2014. AR 15. Plaintiff's applications were denied initially and on reconsideration, and Plaintiff

1 requested a hearing. AR 15. After the ALJ conducted a hearing on March 12, 2019, the ALJ  
2 issued a decision finding Plaintiff not disabled. AR 12-30.

### 3 THE ALJ'S DECISION

4 Utilizing the five-step disability evaluation process,<sup>1</sup> the ALJ found:

5 **Step one:** Plaintiff engaged in substantial gainful activity between October 1, 2017 and  
6 September 30, 2018.

7 **Step two:** Plaintiff has the following severe impairments: degenerative disc disease, left  
8 hip abnormality, AC joint arthropathy, diabetes mellitus with peripheral neuropathy,  
9 obesity, and diffuse idiopathic skeletal hypertosis.

10 **Step three:** These impairments do not meet or equal the requirements of a listed  
11 impairment.<sup>2</sup>

12 **Residual Functional Capacity:** Plaintiff can perform light work subject to additional  
13 limitations.

14 **Step four:** Plaintiff can perform past relevant work. Plaintiff is therefore not disabled.  
15 AR 17-25.

16 The Appeals Council denied Plaintiff's request for review, making the ALJ's decision the  
17 Commissioner's final decision. AR 1-6. Plaintiff appealed the final decision of the  
18 Commissioner to this Court. Dkt. 4.

### 19 LEGAL STANDARDS

20 Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social  
21 security benefits when the ALJ's findings are based on legal error or not supported by substantial  
22 evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As  
23 a general principle, an ALJ's error may be deemed harmless where it is "inconsequential to the  
ultimate nondisability determination." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)

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<sup>1</sup> 20 C.F.R. § 404.1520.

<sup>2</sup> 20 C.F.R. Part 404, Subpart P. Appendix 1.

1 (cited sources omitted). The Court looks to “the record as a whole to determine whether the  
2 error alters the outcome of the case.” *Id.*

3 Substantial evidence is “more than a mere scintilla. It means - and means only - such  
4 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”  
5 *Biestek v. Berryhill*, 139 S.Ct. 1148, 1154 (2019) (cleaned up); *Magallanes v. Bowen*, 881 F.2d  
6 747, 750 (9th Cir. 1989). The ALJ is responsible for evaluating symptom testimony, resolving  
7 conflicts in medical testimony, and resolving any other ambiguities that might exist. *Andrews v.*  
8 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record  
9 as a whole, it may neither reweigh the evidence nor substitute its judgment for that of the  
10 Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is  
11 susceptible to more than one rational interpretation, it is the Commissioner’s conclusion that  
12 must be upheld. *Id.*

## 13 DISCUSSION

14 Plaintiff argues the ALJ erred by misevaluating certain medical opinion evidence,  
15 discounting her testimony, fashioning a deficient RFC, and making unsupported step five  
16 findings. The Commissioner argues the ALJ’s decision is free of harmful legal error, supported  
17 by substantial evidence, and should be affirmed.

### 18 A. The ALJ Did Not Err in Evaluating the Medical Evidence

19 A treating doctor’s opinion is generally entitled to greater weight than an examining  
20 doctor’s opinion, and an examining doctor’s opinion is entitled to greater weight than a non-  
21 examining doctor’s opinion. *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014). An ALJ  
22 may only reject the contradicted opinion of a treating doctor by giving “specific and legitimate”  
23 reasons. *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017).

1           *I. Justin Taylor, M.D.*

2           Dr. Taylor examined Plaintiff in April 2016 and opined Plaintiff “had no limitations  
3 standing, walking, or sitting,” could “lift and carry at the light level,” and could “frequently  
4 balance, stoop, kneel, crouch, and crawl.” AR 24. While Dr. Taylor did not note “climbing  
5 limitations,” he noted “other postural limitations ... based on the claimant’s back pain and the  
6 potential worsening of her symptoms.” *Id.* The ALJ found Dr. Taylor’s opinion “persuasive,”  
7 explaining “the postural assessment of this source is more reliable than the assessment of the  
8 consultants because the consultative examiner actually had the opportunity to see and examine  
9 the claimant in person.” *Id.* The ALJ also found Dr. Taylor’s opinion “otherwise generally  
10 consistent with the findings of the State agency medical consultants, in that all three of these  
11 sources have stated the claimant was able to do light work.” *Id.*

12           Plaintiff first argues the ALJ “erred by failing to apprehend that Dr. Taylor’s opinion was  
13 contradicted by his own findings.” Dkt. 12 at 3. Plaintiff bears the burden of showing the ALJ  
14 harmfully erred. *See Molina*, 674 F.3d at 1111. An ALJ generally may accept any medical  
15 opinion and need not even give reasons. *See Orteza v. Shalala*, 50 F.3d 748, 750 (9th Cir. 1995)  
16 (ALJ must provide reasons for rejecting a medical opinion, but not for accepting and interpreting  
17 one); *see also Turner v. Comm’r of Social Sec. Admin.*, 613 F.3d 1217, 1223 (9th Cir. 2010)  
18 (“the ALJ did not need to provide ‘clear and convincing reasons’ for rejecting [a treating  
19 doctor’s] report because the ALJ did not reject any of [his] conclusions”). Plaintiff thus does not  
20 meet her burden to show the ALJ harmfully erred and the Court accordingly affirms the ALJ’s  
21 determination to credit Dr. Taylor’s opinion. *See Indep. Towers of Washington v. Washington*,  
22 350 F.3d 925, 930 (9th Cir. 2003) (“Our adversarial system relies on the advocates to inform the  
23 discussion and raise the issues to the court. ... We require contentions to be accompanied by

1 reasons.”); *see generally Carmickle v. Commissioner*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008)  
2 (declining to address issues not argued with any specificity); *see also James M. v. Comm’r of*  
3 *Soc. Sec.*, No. C19-5755-BAT, 2020 WL 3605630, at \*2 (W.D. Wash. July 2, 2020) (“[I]t is not  
4 enough merely to present an argument in the skimpiest way (i.e., listing the evidence), and leave  
5 the Court to do counsel’s work—framing the argument, and putting flesh on its bones through a  
6 discussion of the applicable law and facts.”).

7 Plaintiff also argues Dr. Taylor “entirely failed to account for any limitations related to  
8 [Plaintiff’s] symptoms, including pain,” and “did not review medical evidence regarding  
9 [Plaintiff’s] history of osteoporosis, her diabetic neuropathy in her feet, her marked sleep  
10 inefficiencies, or her loss of vision.” Dkt. 12 at 3. As noted above, conclusory arguments made  
11 without elaboration, explanation, or citation to supportive evidence are insufficient to establish  
12 the ALJ harmfully erred and are accordingly rejected.

13 The ALJ accordingly did not err by crediting Dr. Taylor’s opinion.

14 2. *Lisa Wooten and Louis Martin, M.D.*

15 The ALJ found the non-examining consultants opined Plaintiff could “lift and/or carry 20  
16 pounds occasionally and 10 pounds frequently,” “stand and/or walk for 6 hours in an 8-hour  
17 workday and sit for 6 hours in an 8-hour workday,” “frequently balance, kneel, crawl, and climb  
18 ramps and stairs,” “occasionally stoop, crouch, and climb ladders, ropes, and scaffolds,” “reach  
19 overhead occasionally due to limited range in motion in the bilateral shoulders,” and “needed to  
20 avoid concentrated exposure to vibration and to hazards in the workplace, such as moving  
21 machinery and unprotected heights.” AR 24. The ALJ found these opinions “persuasive,” but,  
22 as noted above, found Dr. Taylor’s “assessment regarding the postural movements ... more  
23 persuasive because he personally examined the claimant.” *Id.* The ALJ found, however, the

1 vocational expert “testified the claimant would still have been able to do [her past relevant work]  
2 even with the limitations suggested by the consultants.” *Id.*

3 Plaintiff first argues the ALJ erred by “incorrectly identifying these individuals” as  
4 “medical consultants,” contending that Lisa Wooten is not, as the Commissioner concedes, an  
5 acceptable medical source. Dkt. 12 at 4; Dkt. 13 at 8. However, as the Commissioner correctly  
6 argues, the error is harmless in light of the fact that Dr. Martin “independently endorsed  
7 Plaintiff’s limitations when offering his opinion.” Dkt. 13 at 8; *see Molina*, 674 F.3d at 1115;  
8 *Carmickle*, 533 F.3d 1155, 1162 – 63.

9 Plaintiff also argues Dr. Martin “failed to apprehend that Dr. Taylor’s opinion was  
10 inconsistent with his own findings,” and “did not fully account for the limitations [Plaintiff]  
11 described in her testimony, including the limitations related to her fatigue, sleep apnea,  
12 peripheral neuropathy, edema, and her many fractures.” *Id.* As noted above conclusory  
13 arguments made without elaboration, explanation, or citation to supportive evidence are  
14 insufficient to establish the ALJ harmfully erred and are accordingly rejected.

15 The ALJ accordingly did not err by crediting Dr. Martin’s opinion.

### 16 3. *Other Medical Evidence*

17 Plaintiff lists, seriatim, findings and notations of numerous medical providers. Dkt. 12 at  
18 4-11. She states the findings of these sources support her testimony and undermine the RFC. *Id.*  
19 at 11. The Court rejects Plaintiff’s conclusory statements as grounds to reverse the ALJ. As  
20 discussed above, Plaintiff bears the burden to show the ALJ harmfully erred and conclusory  
21 statements regarding Plaintiff’s view of the record are insufficient to meet this burden.  
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1           **B.       The ALJ Did Not Err by Discounting Plaintiff's Testimony**

2           The ALJ determined Plaintiff's medically determinable impairments could reasonably be  
3 expected to cause the symptoms she alleged and therefore was required to provide "specific,  
4 clear, and convincing" reasons supported by substantial evidence to discount her testimony.  
5 *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017).

6           The ALJ indicated Plaintiff testified she "retired [as a principal] in 2014 because she was  
7 in a significant amount of pain. She stated her weight and diabetes mellitus condition were out  
8 of control, and the demands of her job were something she could no longer handle." AR 20-21.  
9 The ALJ indicated Plaintiff testified she "experiences pain in the neck, shoulders, left hip, and  
10 back, and she also experiences radicular symptoms down to her feet"; "had been treated with  
11 cortisone injections around every 3 months, but she has since discontinued that treatment"; and  
12 "is treated now using a combination of physical therapy and pain medication, but she said she  
13 used her medication sparingly, just twice per month." AR 21. The ALJ further indicated  
14 Plaintiff testified she "went to work again in 2018 for a school system as a substitute office  
15 worker, but she was no longer in a management position. She stated she could not stand or walk  
16 long enough to do this type of work full time." AR 21.

17           The ALJ first discounted Plaintiff's testimony as "not entirely consistent with the medical  
18 evidence of record." AR 22. In support, the ALJ detailed the medical evidence of record. *See*  
19 AR 21 – 22. Plaintiff argues "none of this evidence actually contradicts [Plaintiff's] testimony,"  
20 relying on her arguments concerning the ALJ's treatment of the opinions of Drs. Taylor and  
21 Martin. Dkt. 12 at 12. However, as discussed above, the ALJ reasonably credited the opinions  
22 of Drs. Taylor and Martin. In discounting Plaintiff's testimony, the ALJ pointed to Dr. Martin's  
23 examination, which indicated "extension and flexion of the neck and shoulders were within

1 normal limits,” Plaintiff “displayed good range of motion of the hips,” and “[s]ensation testing  
2 was normal.” AR 21. Although Dr. Martin identified “tenderness in the lower back and in the  
3 cervical spine, to moderate palpation,” the ALJ found “no objective clinical signs were noted.”  
4 *Id.* Further, the ALJ found Plaintiff’s ability to undergo a gastric bypass surgery procedure  
5 “shows the claimant was healthy enough to be medically cleared to have such a procedure  
6 performed.” AR 22. Plaintiff does not challenge this finding. The ALJ accordingly did not err  
7 in discounting Plaintiff’s testimony as “not entirely consistent with the medical evidence of  
8 record.” *See Carmickle*, 533 F.3d at 1161 (“Contradiction with the medical record is a sufficient  
9 basis for rejecting the claimant’s subjective testimony.”).

10 Plaintiff next argues the ALJ improperly discounted Plaintiff’s testimony as inconsistent  
11 with her activities. The ALJ found Plaintiff “has enjoyed travel. In September 2015, she took an  
12 East Coast trip. In September 2017, she took a cruise to Jamaica and the Cayman Islands.” AR  
13 23 (internal quotations omitted). It is not clear, however, that the ALJ discounted Plaintiff’s  
14 testimony on this ground. While the ALJ would have erred if discounting Plaintiff’s testimony  
15 on this ground, the error is harmless in light of the other valid reasons supported by substantial  
16 evidence given to discount Plaintiff’s testimony. *See Carmickle*, 533 F.3d at 1162-63.

17 Plaintiff also argues the ALJ offered a “contradictory analysis” regarding Plaintiff’s  
18 testimony about past alcohol abuse: “The ALJ next questions the accuracy of [Plaintiff’s]  
19 testimony about having had any past issue involving alcohol abuse, while simultaneously stating  
20 ‘I do not find the claimant has an alcohol abuse problem.’” Dkt. 12 at 13. Plaintiff  
21 misapprehends the ALJ’s finding. The ALJ found Plaintiff’s “denial of a *past* issue inconsistent  
22 with the record.” AR 23 (emphasis added). The ALJ’s finding in this regard is not inconsistent  
23 with his finding that Plaintiff *presently* does not have an alcohol abuse problem. *Id.* To the



1 extent the ALJ discounted Plaintiff's testimony on this inconsistency, he did not err. *See Burch*  
2 *v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005) (ALJ appropriately considers inconsistencies in  
3 assessing Plaintiff's testimony).

4 For the foregoing reasons, the ALJ did not err by discounting Plaintiff's testimony.

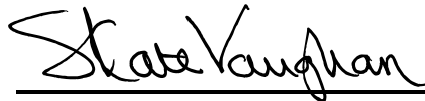
5 **C. The ALJ Did Not Err by Formulating Plaintiff's RFC and Making Step Five**  
6 **Findings**

7 Plaintiff argues the Court should find the ALJ's RFC determination and step five findings  
8 are erroneous because the ALJ misevaluated the medical evidence and improperly discounted her  
9 testimony. Dkt. 12 at 17-18. The argument is foreclosed because, as discussed above, the ALJ  
10 properly evaluated the medical evidence and gave valid reasons supported by substantial  
11 evidence to discount Plaintiff's testimony.

12 **CONCLUSION**

13 For the foregoing reasons, the Commissioner's final decision is **AFFIRMED** and this  
14 case is **DISMISSED** with prejudice.

15 Dated this 23rd day of June, 2021.

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18 S. KATE VAUGHAN  
19 United States Magistrate Judge  
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